

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-OR-261
)	
Citadel Broadcasting Company)	NAL/Acct. No.200432620002
Licensee of AM Station KDYS)	
in Lafayette, Louisiana)	FRN 0001595214
Las Vegas, Nevada)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 14, 2004

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Citadel Broadcasting Company (“Citadel”), licensee of radio station KDYS(AM), Lafayette, Louisiana, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.49 of the Commission's Rules (“Rules”).¹ Specifically, we find Citadel apparently liable for failing to enclose the station’s six antenna towers within effective locked fences or other enclosures.

II. BACKGROUND

2. On October 9, 2003, agents from the FCC Enforcement Bureau’s New Orleans Office (“New Orleans Office”) inspected AM station KDYS licensed to Lafayette, Louisiana. The agents observed that each of the six gates on the fences surrounding the six antenna towers, that had radio frequency potential at the base, were unlocked. In addition, the property did not have a perimeter fence to prevent unauthorized access to the antenna towers.

3. On October 21, 2003, the New Orleans Office issued a Letter of Inquiry (“LOI”) to Citadel concerning the unlocked gates.

4. On November 18, 2003, the New Orleans Office received a response to the above LOI. The response stated that during the last week of September 2003, the station’s chief engineer had unlocked the fences surrounding each tower in order to have repairs performed on them.

III. DISCUSSION

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential

¹ 47 C.F.R. § 73.49.

at the base must be enclosed within effective locked fences or other enclosures. On October 9, 2003, the fences at the base of the six antenna towers for station KDYS(AM) were not locked, rendering them ineffective in preventing access to the antenna towers. In their reply to the LOI, Citadel acknowledges that they were aware of, and responsible for, the gates being unlocked since the last week of September, 2003.

6. Based on the evidence before us, we find Citadel willfully² and repeatedly³ violated Section 73.49 of the Rules by failing to enclose the station's antenna towers within effective locked fences or other enclosures.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for violations involving AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Citadel Broadcasting Company is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.49 of the Rules by failing to enclose the station's antenna towers within effective locked fences or other enclosures.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Citadel Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Citadel Broadcasting Company, City Center West, Suite 400, 7201 W. Lake Mead Blvd., Las Vegas, NV 89128.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins

⁸ See 47 C.F.R. § 1.1914.

District Director, New Orleans Office
Enforcement Bureau

Attachment